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March 14, 2017

VIA FCC ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network (PS Docket No. 16-269); Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (PS Docket No. 12-94); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band (PD Docket No. 06-229); and Service Rules for the 698-746, 747-762 and 777-792 MHz Bands (WT Docket No. 06-150)
- *Ex Parte Communication / Notice of Meeting*

Dear Ms. Dortch:

This firm represents the Colorado Office of Information Technology (“OIT”) and the FirstNet Colorado Governing Body (“FirstNet Colorado”) in connection with the matters discussed in this letter. OIT and FirstNet Colorado have filed Comments and Reply Comments in the above referenced proceeding.

On March 13, 2017, I, along with Brian Shepherd, OIT Broadband Program Manager and Bob Fifer, Arvada, Colorado Mayor Pro Tem and Vice Chair of FirstNet Colorado, attended meetings at the Commission with Erin McGrath, Legal Advisor -- Wireless, Public Safety and International in Commissioner O’Rielly’s office.

In this meeting we discussed OIT and FirstNet Colorado’s positions as outlined in their Comments and Reply Comments. We additionally had general discussions about (i) the issues the Commission identified in the Notice of Proposed Rulemaking; (ii) how the State of Colorado proposed that the FCC should answer those questions; (iii) the State of Colorado’s position on key issues. The matters discussed are summarized in *FirstNet Colorado Governing Body Recommendations to the Federal Communications Commission*, attached to this letter for entry into the record.

Pursuant to Rule 1.1206 of the Commission's Rules, an electronic copy of this letter and the attached summary document are being filed via the Electronic Comment Filing System (ECFS) in this matter.

Please feel free to contact me with any additional questions or concerns you may have.

Very truly yours,



Kenneth S. Fellman, Esq.

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KSF/eaj

cc: Erin McGrath, Legal Advisor -- Wireless, Public Safety and International
Commissioner O'Rielly's Office
- (via email: erin.mcgrath@fcc.gov)
Honorable Bob Fifer, City of Arvada, Colorado
- (via email: bfifer@arvada.org)
Brian Shepherd, Colorado Governor's Office of Information Technology
- (via email: brian.shepherd@state.co.us)



**FIRSTNET COLORADO GOVERNING BODY
RECOMMENDATIONS TO THE FEDERAL COMMUNICATIONS COMMISSION
March 13, 2017**

In the Matter of
**Procedures for Commission Review of State Opt-Out Requests
from the FirstNet Radio Access Network
PS Docket No. 16-269**

The FirstNet Colorado Governing Body (FNCGB) respectfully offers the following recommendations regarding Federal Communications Commission review of State Opt-Out Requests from the FirstNet Radio Access Network. An over-arching concern: *the Commission must interpret the Middle Class Tax Relief and Job Creation Act of 2012 in a way that practically, not theoretically, allows states to exercise their statutory right to opt-out.*

NPRM	FNCGB Comment
Opt-Out Process	
<p>Notice to Opt-Out</p> <ul style="list-style-type: none"> Proposes to require that the state’s opt out notice to the FCC <i>certify</i> that the state has also notified FirstNet and NTIA of its decision. How should this notice be provided to the Commission? Should someone other than a state Governor be permitted to file the notice? 	<ol style="list-style-type: none"> The technical, timing, and procedural requirements placed on opt-out states should be no more comprehensive and stringent than those imposed upon FirstNet and its partners. Governor’s designee should be able to give notice of opt-out decision.
<p>Request for Proposals</p> <ul style="list-style-type: none"> What must a State show to demonstrate it has “developed and completed” an RFP process? How does a state meet the FirstNet standard to have “progressed in such a process to the extent necessary to submit an alternative plan for the construction, maintenance, operation, and improvements of the RAN that demonstrates the technical and interoperability requirements in accordance with 47 U.S.C. 1442(e)(3)(C)(i)?” If a state has not received bids or awarded a contract within the 180 days, should the RFP be deemed incomplete? FirstNet: RFP process is complete when state “has progressed in such a process to the extent necessary to submit an alternative plan.” If state fails to meet “RFP process completion requirement” within 180 day-period, state forfeits its right to further consideration of its opt-out application by the Commission. 	<ol style="list-style-type: none"> Releasing a state Request for Proposal (RFP) satisfies the Act’s requirements. States should have until the end of the 180-day deadline to complete the Alternative Plan and publish an RFP. The Commission should adopt interpretation where “complete” means to publish an RFP, not award a contract. Upon providing notice, states should have a comparable amount of time to “complete” their RFP as FirstNet had to award a contract. States should be allowed a period equivalent to the time FirstNet received in order to receive and evaluate bids, roughly 300 days. Delays by FirstNet should not negatively impact a state’s ability to do what is best for its first responders.



<p>Alternative Plan</p> <ul style="list-style-type: none"> • What criteria should Commission use to determine that state has drafted an alternative plan for “the construction, maintenance, operation, and improvements” of RAN? • What should the state include in the alternative plan in order for the plan to be considered complete? Should plans be required to include separate sections for each of the four RAN categories? <p>Proposes, at a minimum: 1) address the four general subject areas identified in the Act (construction, maintenance, operation, and improvements of the state RAN), 2) address the two interoperability requirements set forth in § 6302(e)(3)(C)(i)(I) and (II) of the Act, and 3) specifically address all of the requirements of the Technical Advisory Board for First Responder Interoperability.</p> <ul style="list-style-type: none"> • Should states be allowed to file amendments or provide supplemental information to the plan once it is filed with the Commission and prior to the Commission’s decision? Should Commission staff be allowed to discuss or obtain clarification of the plan with the entity who filed it? Should the Commission condition approval on substantial compliance with the approved plan under the awarded contract or is this addressed by NTIA in their “ongoing” interoperability evaluation? 	<ol style="list-style-type: none"> 1. Commission requirements should be no more stringent than those applied to FirstNet. <p>In order to fairly compete with FirstNet, opt-out states must have access to information about FirstNet and its partners’ network policies, plan drafts, and final state plans. FirstNet and the FCC can collaboratively develop a process that allows states access to this information as part of the opt-out application process.</p> <p>The Commission should develop clear guidelines on what should be included in a state alternative plan application. Furthermore, the Commission should develop a standardized format for submitting state alternative plans. This information should be made available no later than 90 days prior to delivery of the state plans.</p> <ol style="list-style-type: none"> 2. A state should have the ability to amend and supplement its initial submission to the Commission. The Commission has experience to manage this process based on the waivers it granted to 21 entities that sought to develop public safety LTE networks. There, entities received Commission feedback and modified their initial “Interoperability Showing” multiple times.
<p>Public Access and Comment</p> <ul style="list-style-type: none"> • Should alternative plans be treated as confidential? • Should Commission be able to seek clarification? • Should NTIA and FirstNet be allowed to offer comment to the FCC regarding state plans? If so, should the states be allowed to respond to their comments? • Should there be expedited comment period? 	<ol style="list-style-type: none"> 1. States should be able to designate portions of state alternative plans as confidential. 2. Commission staff should be encouraged to seek clarification on state alternative plans. 3. Under no circumstances should FirstNet be allowed to comment. But if they are, yes, states must be able to respond. 4. Expedited comment should only be permitted if states are allowed to submit amendments



	and supplements to alternative plans.
Evaluation of State Alternative Plans	
Process <ul style="list-style-type: none"> Proposes “shot clock” for Commission action on alternative plans. Commission believes it is barred from evaluating amended or different alternative plan if it has already issued a decision disapproving a state’s alternative plan. How should the Commission document its decisions on state opt-out requests? 	<ol style="list-style-type: none"> Should have a 90-day Shot Clock period and should announce the commencement of the clock. Nothing precludes the FCC from entering an ‘interim decision’ on a state alternative plan, and then allowing that state to submit an amended plan. The FCC should document its decision to approve or disapprove state opt-out requests. States need a written decision identifying basis for determination in order to make fully informed assessment whether to appeal if alternative plan is denied.
Scope <ul style="list-style-type: none"> Proposes evaluation not extend to issues that the Act reserves for NTIA’s review. Proposes Commission approval not create presumption that state plan meets any of the criteria NTIA is responsible for evaluating. Proposes Commission evaluation be limited to the RAN. How should definition of RAN be applied in the Commission’s analysis? Are there elements of it that should not be considered? 	<ol style="list-style-type: none"> Process should be expeditious, clear, and focused on the technical aspects of a state alternative plan. FCC and NTIA review of state alternative plans should not be duplicative. Decision on technical interoperability must be given some presumptive effect. NTIA cannot override Commission’s initial finding on technical interoperability – would render Commission review meaningless and contravene NTIA and FCC review separation defined in the Act. The FCC’s role should be limited to strict technical interoperability.
Content of State Alternative Plan <ul style="list-style-type: none"> Proposes a state’s plan should not adversely impact FirstNet’s ability to plan and deploy the NSPBN and establish nationwide standards and policies. Proposes that any alternate plan that would require alteration or changes to the FirstNet network to accommodate the state’s proposed RAN will be considered to not meet the interoperability requirement under the Act. 	<ol style="list-style-type: none"> State alternative plans should not be denied because of <i>de minimis</i> impacts on FirstNet’s ability to deploy NPSBN. If the Commission issues a denial of a state alternative plan because of <i>de minimis</i> impacts it would be nearly impossible for any state alternative plan to comply with this standard. Furthermore, if independence of the Commission’s interoperability evaluation is not ensured, a standard that requires any interference to require will give FirstNet <i>carte blanche</i> authority to pressure the Commission to deny any state alternative plan for interference, real or imagined.



	<p>2. Commission must define “adverse impacts” clearly and in a way that excludes minor impacts to FirstNet network. Should be a high bar that quantifies and demonstrates significant negative potential impacts. Also must consider relative benefits of a state alternative plan.</p>
<p>Interoperability</p> <ul style="list-style-type: none"> Proposes to evaluate state opt-out plans based solely on whether they comply with the requirements for interoperability (in Section 6302(c)(3)(c)) at the time that the plan is submitted. Proposes that states show they will adhere to FirstNet network policies related to interoperability with respect to nationwide network. Proposes states demonstrate state RAN will adhere to FirstNet network policies related to interoperability, to the extent that FirstNet has published such policies at the time that states submit their plans. Proposes that interoperability considerations related to user equipment and applications are outside of the scope of the Commission’s opt-out evaluation. What specific information should state provide to demonstrate it will be interoperable with the FirstNet network? Should the Commission require states to certify their interoperability compliance? Should a third party with interoperability expertise be allowed, or required to, certify the plan? 	<ol style="list-style-type: none"> Agree that Commission’s review should be based on technical interoperability, <i>and</i> FirstNet’s Network Policies must be better defined for states to comply with Commission’s review of NPSBN interoperability. In order to give states a chance to comply with FirstNet network policies, Commission should set deadline for FirstNet to submit appropriate requirements to the Commission; thereby, allowing states to fully understand opt-out evaluation process 90 days prior to delivery of state plans. FirstNet should work collaboratively with states to ensure all requirements are timely identified and shared. The 180-day statutory deadline to deliver the compliance matrix and state plans is too late. Given the complexity that alternative plans will entail, states need the compliance matrix much sooner; suggested time frame is 90 days prior to delivery of state plan. Evaluation of a state alternative plan’s interoperability with NPSBN should be based on strict technical interoperability and should not include a “broader” review of interoperability. Support Commission proposal to allow states to demonstrate alternative plan will be interoperable with FirstNet network through self-certification by Governor’s designee. Oppose requiring certification by third-party because third-parties could cause delays in the submission of state alternative plans.